

SPECIAL CIVIL APPLICATION No 8107 of 1993

Hon'ble MR.JUSTICE A.L.DAVE

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Or

5. Whether it is to be circulated to the Civil Judge? : NO

Versus

ISHVARBHAI JAGJIVANBHAI

Mr N.D.Gohil, Asstt. GOVERNMENT PLEADER for Respondent No. 2, 3

ORAL JUDGEMENT

1. The petitioners challenge by this petition, the order passed by the Secretary (Appeals), Revenue Department, Ahmedabad in Revision Application under Section 35 of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947, on June 8, 1993.

2. The facts leading to the present petition may be summed up as under :

2.1 One Dahyabhai Patel was the owner of Block No. 174 of village Jothan in Olpad taluke of Surat district. The block admeasured 4 acres- 34 gunthas. Upon his demise, there was dispute about the share in the said property between Dhaniaben, widow of Ranchhodbhai Dahyabhai and Ishwarbhai Jagjivanbhai. This led to filing of a special civil suit in the court of Civil Judge (Senior Division) , Surat bearing Special Civil Suit No. 522 of 1989. In the said suit, a compromise decree was passed whereby this block was to be divided between Dhaniben and Ishwarbhai equally that is- each of them was to get 2 acres- 17 gunthas of land. Southern half went to Ishwarbhai Jagjivanbhai and the northern half went to Dhaniben. Dhaniben is petitioner No.1 (now deceased represented by legal representatives) and Ishwarbhai Jagjivanbhai is respondent No. 1. After the above compromise was arrived at and decree passed, Dhaniben sold her piece of land admeasuring 2 acres- 17 gunthas of Block No. 174 to Ishwarbhai Mangabhai and his sons who are petitioners Nos 3 to 6, by a registered sale deed on July 10, 1990. Mutation entry No. 1379 was also made in the records of rights on August 28, 1990 which was ultimately certified by appropriate authority. Present respondent No.1- Ishwarbhai Jagjivanbhai made an application on November 25, 1991 to the Collector, Surat complaining about transfer of the said piece of land by petitioner No.1 in contravention of provisions contained in Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ('the Act' for short). The Collector, Surat, directed the Assistant Collector , Olpad division to initiate proceedings in the matter. The Assistant Collector, suo motu, took in revision the said proceedings by registering RTS revision case No. 17 of 1992. He came to the conclusion that sale and transfer is in contravention of Section 31 (1) (b) of the Act and that mutation entry has been wrongly certified. He, therefore, cancelled that entry and imposed fine of Rs.250/- upon petitioner No.1 and directed that the land be removed from possession of rest of the petitioners.

2.2 This order was challenged before the Collector, Surat who upheld the order and dismissed the appeal being

RTS Appeal No. 120 of 1992 by his order dated February 26, 1993. That order was challenged before the Secretary (Appeals) who also dismissed the revision confirming the order of the two authorities below. This has given rise to the present petition.

3. Petitioners have contended that provisions of Section 31 of the Act would not be applicable to the facts of the present case. The authorities have proceeded on wrong premise and the order, therefore, may be quashed and set aside. It is also contended that the authorities could not have exercised the powers both under the Act as well as the provisions of the Bombay Land Revenue Code.

4. Learned advocate Mr. Jadeja appearing for the petitioners submitted that it is observed by the first authority that is- Assistant Collectoir that there is breach of provision of Section 31 (1) (b) of the Act. He submitted that the said provision is not applicable to the facts of the present case because the present transaction viz. sale by petitioner No. 1 to other petitioners in question does not sub-divide the land by virtue of a decree or order of a civil court or any other competent court. He has drawn the attention of the court to the provision of sub-section (2) of Section 31 to indicate that there is no sub-division at all.

He submitted further that the transaction in question does not create any fragment as the entire holding of petitioner No.1 is transferred by this transaction. The authorities below have not considered this aspect and have passed the orders mechanically accepting the finding of the lowest authority viz. Assistant Collector who passed the order in question.

5. Learned AGP Mr. Gohil has opposed this petition. He submitted that permission of the Collector is required even for dividing the land by virtue of a decree of court and, therefore, this transaction could not have been effected without permission of the Collector. Therefore, there is breach of this provision. Transaction is, therefore, properly set at naught and imposition of fine is justified.

6. Mr. K.K.Trivedi submitted that appropriate orders may be passed as he appears for a party who is formally impleaded.

7. Having regard to rival contentions, it would be appropriate to quote Section 31 of the Act:

"31. (1) Notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act, nor any part thereof shall be-

(a) transferred, whether by way of sale (including sale in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue or by way of gift exchange, or lease, otherwise, except in accordance with such conditions as may be prescribed;

(b) sub-divided (including sub division by a decree or order of a civil court or any other competent authority) except with the permission in writing of the Collector-

(2) Nothing in sub-section (1)-

(a) shall apply to a transfer of a holding allotted under this Act Gujarat of 1978 where the transfer is of the entire holding not involving any such division thereof or to a sub division of a holding allotted under this Act where such sub-division is made to provide for the shares of persons entitled thereto on the death of the owner, and does not create any fragment; or

(b) shall be deemed ever to have applied to a transfer of a holding allotted under this Act made after the 19th February, 1969 but before the date of the commencement of the Bombay Prevention of Fragmentation and Consolidation of Holdings (Gujarat Amendment) Act, 1978 (hereinafter referred to as "the said date") where such transfer was of an entire holding not involving and sub division thereof and the transfers or his successor in interest was occupying or was in possession of the holding so transferred immediately before the said date and had not been entitled from such holding before the said date in pursuance of an order of eviction passed by the Collector

under sub section (3) of section 9 and such transfer shall not be and shall be deemed never to have been void on the ground that it was contrary to the provisions of this section.

(3) xxxxxx".

8. It may be noted that virtually, the transaction between petitioner No.1 and rest of the petitioners is the disputed transaction and not earlier one. This transaction is by a registered sale deed whereby petitioner No.1 had sold and transferred her entire holding of Block No. 137 to rest of the petitioners. Now, if the provision as contained in sub-section (2) of Section 31 is read, it clearly states that provision of sub-section (1) of Section 31 will not be applicable to a transfer of holding allotted under the Act where the transfer is of the entire holding not involving any sub-division thereof. The outcome is that where the transaction does not sub-divide holding of an allottee, provision of sub-section (1) would not be applicable. Further, if sub-section (2) is further read, it provides that sub-section (1) will not be applicable to sub-division of holding allotted under the act where sub-division is made to provide for the shares of persons entitled thereto on the death of the owner and does not create any fragment. Under the circumstances, the decision of the authorities below that for transfer of land in question, previous permission of the Collector is required is not supported by provision of law. If clause (b) of sub-section (1) of Section 31 is read, it deals with sub-division by a decree or order of a civil court. Here, in the present case, the transaction is not by virtue of any decree or order of a civil court or of any other competent court. Under the circumstances, provision of Section 31 (1) (b) could not have been applied to the present transaction. The authorities below have, therefore, erred in coming to the conclusion that there is breach of this provision as there is no previous permission in writing of the Collector before effecting sale and transfer.

9. Another point that requires consideration is whether the authorities could have exercised powers both under the Act as well as under the Land Revenue Code. In this regard, it may be noted that as has rightly been observed by the learned Secretary (appeals), in his order, consistently, proceedings are initiated under the

Act. Notices are issued under the Act and decisions are also under the Act and, therefore, it cannot be said that proceedings are under RTS or Land Revenue Code and, therefore, as observed above. there is no breach of any provisions under the Act. The orders of the authorities below, therefore, cannot be supported .

10. Petition, therefore, deserves to be allowed and the same is allowed. The impugned orders are quashed and set aside. Rule is made absolute. No costs.

(A.L. Dave, J.)

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